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August 8, 2003

Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 03-128; FCC 03-125

Dear Chairman Powell:

This office represents the Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") in matters related to the provision of telecommunications services on the Cheyenne River Indian Reservation ("Reservation"). The Telephone Authority is a governmental entity of the Cheyenne River Sioux Tribe, and the Telephone Authority's interests, therefore, coincide with those of the Tribe. The purpose of this letter is to address the proposed tribal consultation requirements contained in the draft Nationwide Programmatic Agreement ("Draft Agreement") for the review of certain regulatorily-defined undertakings for the location of communications facilities on lands with cultural, historical and religious significance to Indian tribes pursuant to the National Historic Preservation Act (codified in part at 16 U.S.C. § 470w(7)). We provide these comments on behalf of the Telephone Authority by August 8, 2003, the date for the submission of opening comments. Nationwide Programmatic Agreement, 68 Fed. Reg. 40,876, 40,886 (2003). We also intend to submit reply comments by the September 8, 2003 deadline. *See id.*

As an initial matter, we would like to thank the Commission for its efforts to meet with the National Congress of American Indians and leaders of the United South and Eastern Tribes in the development of the Draft Agreement. These efforts are a step toward the consideration of tribal concerns in the development of Commission policy, however, they do not rise to the level of government-to-government consultation with affected Indian tribes. Consultation between the Commission and each affected Indian tribe regarding each proposal to locate cellular towers on lands with cultural, historical and religious significance to that tribe should be the central feature of the Draft Agreement. Indeed, the Telephone Authority supports the development of a

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nationwide communications infrastructure, but that structure should not come at the cost of tribal heritage. Over the last five centuries, Indian tribes have lost control over and access to their traditional lands as a result of successive waves of non-Indian settlement and federal policy supporting that settlement. As a result, a significant number of sites of cultural, historical and religious importance to the Cheyenne River Sioux Tribe and its members are not within the Reservation. The loss of these sites is a great injury to the Tribe.

The Draft Agreement appears to underestimate the potential damage to historically, culturally and/or religiously significant sites from cellular tower placement. First, many of the significant sites which remain important to the Tribe are located in elevated areas, which telecommunications companies favor for the location of cellular towers. Thus, the potential for conflict between, on the one hand, the preservation of sites of cultural, historical and religious significance to Indian tribes, and on the other hand, the placement of cellular towers is great.

Second, the Draft Agreement proposes to make a number of exclusions where consultation under section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, would not be required. The Draft Agreement appears to justify such exclusions based upon an advance determination that there will be minimal chance for damage to historically, culturally and/or religiously important sites in the excluded areas. Such a blanket exclusion is not justifiable, however, because the determination of damage as it relates to tribal significance can only be made in consultation with the affected Indian tribe. Blanket exclusions are, then, inherently inappropriate under the National Historic Preservation Act, which requires the Commission to “consult with any Indian tribe and Native Hawaiian organization that attached religious and cultural significance” to properties that might be affected the Commission’s undertaking. 16 U.S.C. § 470a(d)(6)(B). Blanket exclusions are doubly inappropriate under the Commission’s obligation to consult on a government-to-government basis with the Indian tribes who will be affected by the Commission’s actions. *See* Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement, 16 FCC Rcd 4078, 4080 (2000), cited in, 68 Fed. Reg. at 40,877. As a practical matter, just because a significant site has already suffered damage does not mean in any way that further disturbance will not cause further damage. The proposed exclusions are, as a result, inappropriate and the Commission should amend the Draft Agreement accordingly.

One of the most important aspects of the National Historic Preservation Act was to assure that federal agencies would consult with Indian tribes whenever a federal undertaking would affect a site of cultural, historic and/or religious significance to an Indian tribe, whether the site is located on or off of tribal lands. It is the Telephone Authority’s position that the Commission should engage in government-to-government consultation with each affected Indian tribe regarding the placement of a cellular tower on sites that may have historical, cultural and/or religious significance to that tribe.

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The Telephone Authority looks forward to the comments submitted by others in response to the Commission's rulemaking notice, and will provide additional reply comments regarding the Draft Agreement by the September 8, 2003 deadline.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alice E. Walker".

Alice E. Walker

AEW/dav

cc: JD Williams/Mona Thompson